

**SECRETARY OF STATE[721]**

**Adopted and Filed**

**Rule making related to felony conviction verification**

The Secretary of State hereby amends Chapter 28, “Voter Registration File (I-Voters) Management,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 17A.3 and 47.1.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 48A.30.

*Purpose and Summary*

This rule making is one of several new measures Iowa Secretary of State Paul Pate’s office is taking to ensure the integrity of Iowa’s felon database. Felons are currently barred from voting in Iowa unless their rights have been restored. Iowa’s felon database contains more than 100,000 entries.

The Secretary of State’s office has partnered with the Iowa Judicial Branch to ensure information provided by the courts to the Secretary of State’s office pursuant to Iowa Code section 48A.30, regarding felony convictions, is accurate. This includes a six-step verification process. Three of those steps are new, and the others have been enhanced.

The intent of this rule making is to clarify the roles of the Iowa Judicial Branch, the Secretary of State’s office and county auditors regarding the felon database. The changes to the rule require the Secretary of State’s office to verify a felony conviction prior to forwarding the voter’s information so county auditors can complete the cancellation process.

In addition to adding verification steps for new convictions, the Secretary of State’s office will also be conducting a manual review of all database entries. The goal is for the review to be completed prior to the November 3, 2020, general election.

Secretary Pate’s office will utilize federal funds to pay for additional staff and review of the felon data.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 18, 2019, as **ARC 4804C**. A public hearing was held on January 10, 2020, at 2 p.m. at the Iowa Capitol Building, Room 22, Des Moines, Iowa.

Two members of the public commented during the hearing. Daniel Zeno, a representative of the American Civil Liberties Union (ACLU), echoed the organization’s written comments, which are detailed below. Eric Van Kerckhove, who is the mayor of Palo, Iowa, and a convicted felon, shared his experience with the restoration process, reregistering to vote, and running for public office. Mayor Van Kerckhove also shared ideas on how the Secretary of State’s office might reach out to individuals who have had their rights restored and encourage them to register and participate in elections.

The Secretary of State received written comments from the Iowa Bar Association, the ACLU, and the Brennan Center.

The Iowa State Bar Association’s Criminal Law Section wanted to ensure that a verification of a defendant’s identity would occur before the defendant’s voter registration was canceled. The fifth of six verifications occurs in the county auditor’s office, where the information received from the courts is compared to the list of registered voters in the county. In accordance with rule 721—28.4(48A), the Secretary of State’s office is working with the courts to be able to include Iowa Department of

Transportation (DOT) ID numbers and sex designation with the information auditors are sent, which will provide additional data points to ensure that only individuals who have been convicted of a felony have their registration canceled. The final verification of the cancellation occurs when the voter is sent a notice that explains why the voter's registration was canceled.

The ACLU's comments stated: (1) "Proposed rule 28.4(2) should expand on the process through which the Secretary and the Judicial Branch will collaborate 'to obtain documentation about felony convictions in a timely, efficient fashion'" and (2) "The proposed rulemaking should be amended to ensure that proper notice is given to voters incorrectly removed from the list of persons with felony convictions provided by the Iowa Judicial Branch." The ACLU's first comment was addressed at length at the Administrative Rules Review Committee meeting on January 10, 2020. The Iowa Secretary of State's office, a member of the Executive Branch, does not have rule-making authority over the Judicial Branch. The language in the rule was drafted in partnership with the Judicial Branch, and proof of conviction documentation is currently being provided through remote access to Iowa Courts Online. The ACLU's second comment addresses the Secretary of State's review of convictions occurring prior to 2020, which is not a part of this rule making.

The Brennan Center's comments requested different matching criteria, which would require exact matches of a voter's date of birth and social security number, and matches of a first name, short version or long version, and last name. The last name must be the voter's current last name or a last name recorded in the statewide voter registration database. Iowa law does not require voters to provide their social security number when registering to vote, and accordingly not every voter registration record has a social security number affiliated with it. Additionally, not all voters update their voter registration when a name change occurs. Therefore, adopting this approach would cause some convicted felons to remain on the voter rolls and to believe they are eligible to vote, which puts them at risk for reoffending. Additionally, in the unlikely event of an erroneous match, voters are mailed a cancellation notice and given the opportunity to contact their county auditor if they believe the cancellation was in error. The Brennan Center also requested that the Secretary of State's office send a notice to voters as a part of the office's review of convictions prior to 2020, which is not a part of this rule making.

No changes from the Notice have been made.

#### *Adoption of Rule Making*

This rule making was adopted by the Secretary of State on January 22, 2020.

#### *Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

#### *Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

#### *Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Secretary of State for a waiver of the discretionary provisions, if any, pursuant to 721—Chapter 10.

#### *Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on March 18, 2020.

The following rule-making action is adopted:

Amend rule 721—28.4(48A) as follows:

**721—28.4(48A) Cancellations and restorations of voter registration due to felony conviction.**

**28.4(1)** Based upon information provided to the state registrar by the state or federal judicial branch and by the governor, the state registrar shall maintain a list of ~~convicted~~ felons convicted in State of Iowa District Courts and the United States District Courts of the Northern and Southern Districts of Iowa and a list of convicted felons whose voting rights have been restored by the governor of Iowa. Periodically, these lists shall be matched with I-VOTERS. Based upon predetermined search criteria, a list of likely matches of ineligible voters shall be produced for each county and provided to each county registrar.

**28.4(2)** The state registrar has a demonstrated institutional need for documentation that sufficiently establishes an individual defendant's felony conviction. Therefore, the state registrar shall collaborate with the judicial branch to obtain documentation about felony convictions in a timely, efficient fashion, which shall include documentation sufficient to establish an individual defendant's felony conviction. When the state registrar receives felony conviction information from the United States attorney pursuant to Iowa Code section 48A.30(1) "d," the state registrar shall request documentation sufficient to establish conviction of an offense classified as a felony under federal law. The state registrar shall verify any conviction information provided pursuant to Iowa Code section 48A.30(1) "d" prior to adding an individual to the list of convicted felons maintained pursuant to subrule 28.4(1).

**28.4(2) 28.4(3)** Within ~~45~~ 30 days of the receipt of the list produced by the state registrar in accordance with subrule 28.4(1), the county registrar shall review the list of likely matches, determine the accuracy of the search results based on first name, last name, date of birth and social security number and cancel the registrations of those voters found to be ineligible to vote. The county registrar may also utilize sex, Iowa driver's license or nonoperator's identification numbers, and previous names, if available, to determine the accuracy of the search results. If the county registrar has questions regarding a felony conviction, the county registrar shall contact the court of conviction's clerk of court. Notice shall be sent to the voter at the voter's address in the voter registration file pursuant to Iowa Code section 48A.30(2). The notice shall be sent by forwardable mail and shall provide the voter an opportunity to have the county registrar review any relevant information that establishes the voter's eligibility to vote. When inclusion of a voter's name on the list of likely matches is found to be inaccurate, the registrar shall mark the record as a "no match" and provide that information to the state registrar.

**28.4(3) 28.4(4)** New applicants for registration entered into I-VOTERS by a county registrar shall be electronically matched against the list of convicted felons in the file, and applicants disqualified due to felony conviction shall not be registered as voters. The county registrar shall notify the registration applicant of the applicant's disqualification in the same manner as provided for in subrule 28.4(2) above.

[Filed 1/24/20, effective 3/18/20]

[Published 2/12/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/12/20.